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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE, Plaintiff and Respondent, v. ARMANDO JOSEPH GARCIA, Defendant and Appellant.	C087807 (Super. Ct. No. 08F11)

Defendant Armando Joseph Garcia appeals from the trial court's order denying his second petition for resentencing on his conviction for receiving stolen property pursuant to Penal Code[1] section 1170.18. He contends the trial court erred in denying the petition without a hearing and that the prosecution failed to carry its burden of proving the value of the items in question exceeded $950. Defendant was entitled to a hearing as his

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1 Undesignated statutory references are to the Penal Code.

petition made a prima facie case of eligibility for relief under section 1170.18. We shall remand for a hearing on the petition, at which *defendant bears the burden* of proving the stolen items he received, a camera, cell phone, rifle, television, and jewelry, had a value that did not exceed $950.

BACKGROUND

We take the facts of defendant's crime and the relevant proceedings of his conviction from our two prior opinions in this case. (See *People v. Woodell* (1998) 17 Cal.4th 448, 451 [the record of conviction includes an appellate opinion disposing of the appeal in the case].)

"Defendant's current offense for which he has been incarcerated under the three strikes law was receiving stolen property. It was committed in December 2007. He and his wife acted as lookouts while another person burglarized a home. When police tried to handcuff him, defendant attempted to pull free, requiring officers to restrain him with pepper spray. Defendant had a stolen camera on him. Police found a stolen rifle in the orchard across the street from the burglarized home. Defendant was charged with first degree residential burglary, grand theft of a firearm, receiving stolen property, and some misdemeanors. He pled guilty to receiving stolen property and admitted prior strikes for a stipulated sentence of 25 years to life in prison." (*People v. Garcia* (2014) 230 Cal.App.4th 763, 766 (*Garcia*).)

"Acting as a lookout in a residential burglary, defendant received a camera, cell phone, rifle, television, and jewelry taken during the burglary. He pled guilty to receiving stolen property and admitted prior strikes with a stipulated sentence of 25 years to life. (*People v. Garcia* (2014) 230 Cal.App.4th 763, 766.)" (*People v. Garcia* (Jan. 24, 2017, C081258) [nonpub. opn.] (*Garcia II*).)

Defendant subsequently filed a petition for resentencing under the resentencing provision of the Three Strikes Reform Act, section 1170.126. (*Garcia, supra,* 230 Cal.App.4th at p. 765.) The trial court denied the petition, finding defendant posed an

unreasonable risk to public safety if released, which we affirmed on appeal. (*Id*. at pp. 765, 770.)

After this, defendant filed a petition for resentencing pursuant to the resentencing provision of Proposition 47, section 1170.18. (*Garcia II*, *supra*, C081258.)

"The petition alleged that the stolen property was worth less than $950 but contained no factual allegations or evidence supporting the contention. The People filed a motion to vacate the hearing on the petition. Attached to the motion was a police report listing values for the items stolen in the burglary, which together totaled $1,350.

"Defendant filed a bench brief asserting that the police report was insufficient to establish value and requested a hearing on the matter. The trial court found that defendant had established a prima facie case and set a hearing on his petition at which he would have the burden of establishing that the value of the stolen property was less than $950. Before the hearing, the People filed a brief asserting a right to withdraw from the plea agreement if the petition was granted. Citing our interpretation of section 1170.126 in *People v. Bradford* (2014) 227 Cal.App.4th 1322, the People additionally argued that defendant was limited to the record of conviction to establish the value of the stolen property.

"Defendant was present at the hearing on his petition. The trial court reiterated that defendant had the burden of proving the stolen property's value. Defense counsel replied, 'With respect to the value and the People's objection being based on items that -- the count he pled to, as articulated in the police report, I had an investigator in my office conduct sweeps, so to speak, about the area, talking to pawn shops, trying to find if there would be a witness we could call to assess the value of the rifle, the television set, the camera, the ring. His efforts were, I wouldn't say in vain, however, we were unable to track down a witness [who] was willing to testify that the values were as they were articulated in the police report were either accurate or inaccurate. They just couldn't say one way or the other.'

"Counsel also noted his difficulties in presenting evidence outside the police record in hearings before other trial courts in light of the *Bradford* decision. He also told the court that, in light of a recent Court of Appeal decision, defendant could face prosecution again if he testified as to the value of the property, the petition was granted, and the People were allowed to withdraw the plea agreement.

"The trial court agreed with the People that *Bradford* 'does seem to be on point.' Defendant was therefore limited to the record of conviction, like the probation and sentence reports. The prosecutor and defense counsel agreed that the record of conviction was silent regarding the value of the items. The court noted that defendant admitted to 'various things that could have easily placed him in the first-degree residential burglary arena.' It also found that the property he received 'typically are items that have some value.'

"The court found that just looking at the stolen items and the year in which they were taken, 2007, 'one would believe it to be over 950 bucks, and so that's a logical way to look at that count, ergo, to the extent Mr. Garcia must prove otherwise, you know, he's fighting a losing battle, even on the blank charge itself. So for all those reasons, I'm going to deny the petition to reduce his offense to the grade of a misdemeanor.' " (*Garcia II*, *supra*, C081258.)

On appeal, we found defendant, as the petitioner, had the burden of proving his eligibility for resentencing. (*Garcia II*, *supra*, C081258.) We also found the trial court erred in holding defendant was limited to the record of conviction to prove his eligibility for relief and by advising defendant that testifying as to the value of the property could jeopardize his plea agreement, but the errors were harmless because defendant presented no evidence of the property's value. *(Ibid*.) We "affirmed without prejudice to defendant filing a successive petition that supplies evidence of his eligibility for resentencing." (*Ibid*.)

Defendant filed pro. per. a successive section 1170.18 petition by filling out the Shasta County form, which contained no provision for alleging or including facts supporting his eligibility for relief. Attached to the petition was a declaration from defendant in which he stated, with reasons for each, that the value of the television was $100 to $125, the camera was $60 to $70, the jewelry consisted of $16 in necklaces, $9 in bracelets, $12 in snap-on earrings, $30 in silver earrings, $150 for a diamond wedding band, the rifle at $150, and the cell phone was worth no more than $100, for a total of $662. After defendant's appointed appellate counsel in his prior (and this current) appeal sent a letter to the court requesting action on the petition, the prosecution filed a response asserting the actual value of the property was $2,465, noting defendant seemed to base his valuation of the property in 2018 when he filed his petition, rather than when they were stolen in 2008. Attached to the response were supporting reports from the investigation of the case by the Shasta County Sheriff's Department, which included an estimation of the property's value at $2,530.

The trial court did not hold a hearing on the petition. The prosecutor, but not defense counsel or defendant, were present at the ruling. It denied the petition, finding the property was valued at $2,530.

DISCUSSION

Defendant claims that his petition set forth a prima facie case for relief, entitling him to a hearing on the petition. We agree. He additionally claims what stolen property he received was subject to dispute because he was only in actual possession of the camera, and no evidence established that the other items were in his constructive possession, and that once he established a prima facie case for relief, the prosecution had the burden of proving beyond a reasonable doubt that the value of the items exceeded $950, which it failed to do. We reject these claims.

As relevant here, pursuant to Proposition 47, a defendant is eligible to have his or her felony conviction for receiving stolen property reduced to a misdemeanor if the value

of the items received does not exceed $950. (§§ 1170.18, subds. (a), (b), 496.) A section 1170.18 petition is initially screened to determine whether it sets forth a prima facie case for relief. (*People v. Washington* (2018) 23 Cal.App.5th 948, 953.) When eligibility "turn[s] on facts that are not established by either the uncontested petition or the record of conviction . . . an evidentiary hearing may be 'required if, after considering the verified petition, the return, any denial, any affidavits or declarations under penalty of perjury, and matters of which judicial notice may be taken, the court finds there is a reasonable likelihood that the petitioner may be entitled to relief and the petitioner's entitlement to relief depends on the resolution of an issue of fact.' " (*People v. Romanowski* (2017) 2 Cal.5th 903, 916.)

In order to establish a prima facie case, a defendant's petition "should describe the stolen property and attach some evidence, whether a declaration, court documents, record citations, or other probative evidence showing he is eligible for relief." (See *People v. Perkins* (2016) 244 Cal.App.4th 129, 140; see *People v. Bear* (2018) 25 Cal.App.5th 490, 500 [undisputed declaration can support relief under § 1170.18].) A petition that contains no information about the value of stolen property does not state a prima facie case and can be dismissed summarily. (*People v. Sherow* (2015) 239 Cal.App.4th 875, 877.) While defendant's first petition contained only a general statement that the property's value did not exceed $950, this petition contained a declaration from defendant specifying values for each of the items, their total value of $662, and reasons for the valuation of each item. This establishes a prima facie case for relief. Since the value of the items was disputed, defendant is entitled to a hearing on his petition. We shall accordingly reverse and remand for a hearing on the petition.

On remand, defendant bears the burden of proving he is eligible for relief by showing that the value of the items he received does not exceed $950. Citing *People v. Frierson* (2017) 4 Cal.5th 225, defendant claims that once he establishes a prima facie

case for relief through his petition, the prosecution bears the burden of proving beyond a reasonable doubt that the value of the property exceeds $950. He is wrong.

In the appeal of defendant's first petition, we held he bears the burden of proving the value of the property did not exceed $950 and rejected defendant's claim to the contrary. Defendant is barred from relitigating this issue under the doctrine of collateral estoppel.[2] (*Zevnik v. Superior Court* (2008) 159 Cal.App.4th 76, 82.) Even if *Frierson* could be a reason for finding an exception to this rule (see *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, 64 [exception for issue of pure law " 'if injustice would result or if the public interest requires that relitigation not be foreclosed' "]), it would not apply here.

Frierson addressed an exception to eligibility for resentencing under the resentencing provision of Proposition 36, section 1170.126. (*People v. Frierson, supra,* 4 Cal.5th at pp. 229-230.) Following Proposition 36, a defendant convicted of a felony that is not serious or violent is ineligible for a three strikes sentence unless the People prove beyond a reasonable doubt an enumerated disqualifying factor such as being armed during the commission of the offense. (*Frierson*, at pp. 233-234.) A defendant seeking resentencing under section 1170.126 for a felony that was not serious or violent was eligible for relief unless one of those same enumerated disqualifying factors was present. (*Frierson,* at p. 234.) While section 1170.126 did not address the burden of proof for these ineligibility factors, the Supreme Court held that, as with the prospective allocation of Proposition 36, the People bore the burden of proving beyond a reasonable doubt a factor rendering the defendant ineligible for relief. (*Frierson*, at pp. 239-240.)

"A defendant seeking resentencing under section 1170.18 bears the burden of establishing his or her eligibility, including by providing in the petition a statement of

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[2] Since this appeal involves a new action, defendant's successive petition, law of the case does not apply.

personally known facts necessary to eligibility." (*People v. Page* (2017) 3 Cal.5th 1175, 1188.) *Page*, which, unlike *Frierson*, addresses the resentencing provision of Proposition 47, governs. Defendant bears the burden of proving his eligibility for relief at the hearing on his petition. He also cannot contest what stolen property he received, as that was established from the summary of facts in our opinion in the appeal of his prior section 1170.18 petition.

DISPOSITION

The trial court's order denying defendant's petition is reversed and the matter is remanded for an additional proceeding on the petition consistent with this opinion.

/s/
Robie, J.

We concur:

/s/
Raye, P. J.

/s/
Renner, J.